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EX PARTE OR LATE FILED

May 5, 2017

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MAY - 5 2017

Federal Communications Commission
Office of the Secretary

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51

Dear Ms. Dortch:

DOCKET FILE COPY ORIGINAL

In accordance with the *Second Protective Order* for the above-referenced proceedings, Sorenson Communications, LLC ("Sorenson") herein submits a redacted version of the attached ex parte in the above-referenced proceedings.

Sorenson has designated for highly confidential treatment the marked portions of the attached documents pursuant to the *Second Protective Order* in CG Docket Nos. 03-123 and 10-51.¹ Sorenson's ex parte includes granular data with respect to its staffing costs in absolute total, its interpreter efficiency, its interpreter wage levels over time, and staffing strategy. As such these materials fall under the following enumerated items in Appendix A of the *Second Protective Order*:

2. Information that discusses in detail current or future plans to compete for a customer or specific groups or types of customers (e.g., business or residential customers), including current and future procurement strategies, pricing strategies, product strategies, advertising or marketing strategies, business plans, technology implementation or deployment plans and strategies (e.g., engineering planning documents), plans for handling acquired customers, and human resources and staffing strategies.
3. Information that provides granular information about a Submitting Party's past, current or future costs, revenues, marginal revenues, or market share, and future dividends.

Pursuant to the protective order and additional instructions from Commission staff, Sorenson is filing a redacted version of the document electronically via ECFS, one copy of the Highly Confidential version with the Secretary, two copies of the redacted version with the

¹ *Structure & Practices of the Video Relay Serv. Program; Telecomms. Relay Servs. & Speech-to-Speech Servs. for Individuals with Hearing & Speech Disabilities*, Second Protective Order, DA 12-858, 27 FCC Rcd. 5914 (Cons. & Gov't Affs. Bur. 2012).

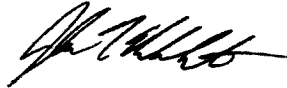
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Secretary, and sending copies of the highly confidential version to Eliot Greenwald and Robert Aldrich of the Consumer and Governmental Affairs Bureau and the TRS Reports mailbox.

Please contact me if you have any questions or require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata".

John T. Nakahata
Counsel to Sorenson

Attachment

cc: Eliot Greenwald
Robert Aldrich
TRSReports@fcc.gov



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Federal Communications Commission
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Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
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Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51

Dear Ms. Dortch:

On May 3, 2017, Scott Wood, General Counsel, Lance Pickett, Vice President of Marketing, and Chris Wakeland, Vice President of Interpreting, of Sorenson Communications, LLC (“Sorenson”), Rebekah Goodheart, outside counsel to Sorenson, and Rajesh Srinivasan and I, outside counsel to Sorenson, met with Eliot Greenwald, Karen Peltz Strauss, and Robert Aldrich of the Consumer and Governmental Affairs Bureau, and Dana Shaffer and Andrew Mulitz of the Office of Managing Director, regarding the *Order and Further Notice of Proposed Rulemaking* on Video Relay Services (“VRS”).¹ On May 4, 2017, Scott Wood, Lance Pickett, Chris Wakeland, Rebekah Goodheart, and I met with Zenji Nakazawa, Public Safety and Consumer Protection Advisor to Chairman Pai.

There were three topics of discussion. First, Sorenson urged the Commission to ensure that deaf consumers “pay rates no greater than the rates paid for functionally equivalent voice communication services,” as required by statute.² Second, Sorenson discussed the market pressures that it faces for the services of Video Interpreters (“VIs”). Third, Sorenson discussed issues that it identified with data relied on by the Commission in its *Further Notice of Proposed Rulemaking* (“FNPRM”).

A. Rates Paid for Functionally Equivalent Service

Sorenson encouraged the Commission to keep costs low for deaf consumers. The Commission has a statutory mandate to ensure that deaf consumers using VRS “pay rates no

¹ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, FCC 17-26, 32 FCC Rcd. 2436 (2017) (“*Order and FNPRM*,” “*Order*,” or “*FNPRM*,” as appropriate).

² 47 U.S.C. § 225(d)(1)(D).

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greater than the rates paid for functionally equivalent voice communication services.”³ Last year, the Communication Service for the Deaf reported that 70 percent of the signing community was unemployed,⁴ while the nationwide average for unemployment was around 4.8 percent.⁵ Given this unemployment rate, deaf consumers may struggle to purchase the necessary equipment and broadband internet connection necessary for VRS.

Hearing individuals do not have to pay a lot to set up voice phone service. A basic phone and minimal phone service are inexpensive. Deaf individuals have to pay significantly more to obtain equivalent service.

For example, if deaf consumers use a laptop, the laptop must allow for video playback at 30 frames per second, a capability that many laptops lack. The laptop should also support a 720p format to allow consumers to have a clear conversation. Deaf individuals who have difficulty seeing also must purchase large monitors.

Because laptops often do not have the necessary specifications and because they are not optimal for long conversations, many deaf consumers opt for video phones. These phones carry their own significant expenses. At minimum, these consumers must purchase a smartphone, such as an iPhone, in order to be able to have a video conversation. These phones cost approximately \$400 to \$500. But smartphones do not provide sufficient video quality to have a clear conversation. The insufficient video quality of smartphones effectively forces deaf consumers to use higher-quality videophone equipment, which can cost up to \$1800.⁶ Indeed, the equipment that Sorenson provides its customers costs the company at around \$600 to produce, after taking into account the costs of the videophone, monitor, and research and development.

In addition to this equipment, deaf consumers need a high-speed broadband connection in order to have a clear conversation. Most broadband providers give their customers 20 Mbps of download speed and 2 Mbps of upload speed. But in order to have a smooth conversation, deaf consumers need at least 5 Mbps upload speed, which is higher than the minimum universal service requirement. In addition, advertised speeds are often higher than actual speeds, and simultaneous use of the Internet in the household will lower speeds. So in practice, deaf consumers need to buy broadband service with more than 5 Mbps of upload speed and, consequently, have to pay more for broadband service than hearing consumers.

³ 47 U.S.C. § 225(d)(1)(D).

⁴ See CSD, *Innovation* (last visited May 5, 2017), <https://www.csd.org/innovations/>.

⁵ See Bureau of Labor Statistic, Data Tools; Top Picks; Unemployment Rate (Seasonally Adjusted) (May 5, 2017), <https://data.bls.gov/cgi-bin/surveymost>.

⁶ See Comments of Sorenson Communications, LLC, Regarding Section IV.A-B and F of the Further Notice of Proposed Rulemaking at 3, Table 1, CG Docket Nos. 10-51 and 03-123 (filed Apr. 24, 2017).

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Faster broadband is not only necessary for consumers; it also benefits the TRS Fund. Slow or poor quality broadband can lead to longer calls. Faster broadband avoids this unnecessary and avoidable burden on the Fund and ratepayers.

The Commission should consider this information and ensure that it is meeting its statutory mandate to guarantee that deaf consumers pay rates no greater than the rates paid by hearing consumers for functionally equivalent service. The Commission should be cognizant of the fact that these costs, which are necessary to obtain functionally equivalent service, did not exist for deaf consumers when the Americans with Disabilities Act ("ADA") was passed. Thus, the Commission should keep overall costs low for deaf consumers.

B. Changing Market for Video Interpreters

Sorenson discussed the changing market for video interpreters. Sorenson strives to create a good work environment for its VIs. Sorenson balances the need for users to have a fast speed of answer with the need for VIs to have manageable workloads so that they can also perform other interpreting work in their communities.

But while Sorenson has built a good work environment for its VIs, Sorenson faces market pressures that draw VIs away from working for the company. VRS providers need highly skilled interpreters. But these interpreters are in high demand and thus can command high hourly wages. At the current VRS rates, Sorenson pays VIs ***BEGIN HIGHLY

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END HIGHLY CONFIDENTIAL⁷ But VIs can often earn higher hourly wages performing community work. Our reply comments include several examples.⁸ Thus, while VIs enjoy working for Sorenson, higher rates elsewhere have caused VIs to work less for Sorenson.

For example, Sorenson has experienced ***BEGIN HIGHLY CONFIDENTIAL***

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CONFIDENTIAL***¹⁰ This change is significant because ***BEGIN HIGHLY

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⁷ See Ex. 1.

⁸ See Reply Comments of Sorenson Communications, LLC, Regarding Section IV.A-B and F of the Further Notice of Proposed Rulemaking at 11-12, Exhibit 7, CG Docket Nos. 10-51 and 03-123 (filed May 4, 2017).

⁹ See Ex. 2.

¹⁰ See Ex. 3.

¹¹ *Id.*

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All of this puts substantial upward pressure on VI wages for any provider that seeks to continue to be able to hire and retain sufficient skilled interpreters over the coming years. VI costs are already substantial for Sorenson. In addition to wages, healthcare and other benefit costs associated with employing VIs continue to increase, and thus are not reflected in historical cost numbers. For example, since the start of 2016, an increasing number of states and localities have enacted laws requiring paid sick leave for part-time employees. Those costs are not at all reflected in 2015 cost numbers and only partially in 2016 cost numbers, and these types of requirements are anticipated to continue to increase. It would be arbitrary—and not competitively neutral—to allow other VRS providers to increase wages of interpreters but not allow Sorenson to do the same. Yet the current proposed tiered rate structure would do exactly that by paying other providers more for additional hours or labor used.

Sorenson urges the Commission to set VRS rates high enough to ensure that Sorenson and other VRS providers can continue providing qualified interpreters for their customers.

C. Tiered Rates for VRS

Sorenson raised several concerns regarding the proposed tiered rates for VRS and the supporting data for those rates. Section 225's requirement that deaf individuals who use VRS must "pay rates no greater than the rates paid for functionally equivalent voice communications services" is a critical element of the ADA's remedial goal.¹² As Sorenson explained in its comments, to fulfill its responsibility to deaf consumers, the Commission needs to adopt a rate structure adequate to sustain—and indeed *improve*¹³—VRS over the long run. The *FNPRM* proposes a potential year-four rate of \$2.63 based on "average historical expenses for all providers."¹⁴ Sorenson has discovered that this rate is incorrect and insufficient to meet the statutory mandates for several reasons, including that the rate:

- does not include any return component;
- does not gross-up for taxes;
- does not factor in upward pressure on VI wages;
- does not include numbering charges; and
- does include the value of intellectual property.

The proposed rate of \$2.63 is based on 2015 reported industry average allowable costs (which are not only incomplete, but also out-of-date), without any return component. If the Commission chooses to set rates for VRS instead of pursuing a market-based approach, the Commission should start its calculation with the industry average projected allowable costs for 2017-2018, minus Rolka's proposed \$0.03 rate of return. Accounting for Sorenson's revised RSDR filing, that starting point is \$2.92. Then, to account for the true cost of VRS as required by the ADA, the Commission should add to that costs for numbering and intellectual property for service; then

¹² 47 U.S.C. § 225(d)(1)(D).

¹³ *See id.* § 225(d)(2).

¹⁴ *FNPRM*, 32 FCC Rcd. at 2475 ¶ 94.

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add to that the cost of equipment and associated research and development, installation, outreach, and intellectual property.

Including a return component based on a commercially reasonable operating margin and accounting for the true costs of VRS, the sustainable, unitary VRS rate should be \$4.19; including a return component based on a commercially reasonable operating margin and accounting for service-related costs but excluding costs relating to access devices and outreach (contrary to the statutory mandate), the VRS rate would be \$3.73 per minute.¹⁵

After adjusting for taxes, either of these rates would result in an approximate pre-tax margin of 15.9 percent and post-tax margin of about 9.5 percent. The 9.5 percent post-tax margin is similar to the 9.75 percent rate of return that is now provided to rate-of-return incumbent local exchange carriers ("RLECs").¹⁶ As with RLECs, VRS providers' expenses should be grossed up for taxes. Sorenson proposes that this rate apply to all providers except for those in the emerging tier.

Sorenson discussed the fact that historical costs for VIs—the only costs that increase significantly from year in the Administrator's projections for 2017 and 2018¹⁷—understate future costs. As discussed above, future costs for VIs will be higher than in either 2015 or 2016, and will continue to increase. It would be arbitrary and capricious for the Commission to ignore those likely higher costs, which are not likely to be offset by increased efficiencies in VI call handling.

Sorenson clarified that its proposed rates do not include accounting for historical interest.

Sorenson also discussed discrepancies between Rolka Loube's data and the data provided by Purple and ZVRS, as more fully outlined in Sorenson's ex parte letter of May 4, 2017.¹⁸

¹⁵ Attached as Exhibit 4 is a side-by-side comparison of how to calculate a sustainable VRS rate—the table on the left includes all the true costs of VRS, including numbering related costs, intellectual property for service, CPE research and development, CPE, intellectual property for end points, installs and outreach, and applies a reasonable 9.54 percent post-tax (15.9 percent permitted pre-tax margin) showing that the rate should be no lower than \$4.19; the table on the right excludes (contrary to the statute) costs relating to access devices and outreach, and arrives at \$3.73.

¹⁶ See *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33, 31 FCC Rcd. 3087, 3093 ¶ 10 (2016).

¹⁷ See *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate* at 38, Table 5, CG Docket Nos. 10-51 and 03-123 (filed Apr. 28, 2017).

¹⁸ See Letter from John T. Nakahata, Counsel to Sorenson Communications, LLC, to Marlene H. Dortch, Secretary, FCC, at 2-3, CG Docket Nos. 10-51 and 03-123 (filed May 4, 2017).

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Finally, Sorenson urged the Commission to treat ZVRS and Purple as one company for purposes of the tiers, even if they have not merged their operations yet. Otherwise, the Commission provides companies with an incentive to not merge their operations, or worse, artificially to subdivide their operations.

In addition to the exhibits discussed in this letter, Sorenson presented other exhibits at the meeting. These exhibits are attached to this letter.¹⁹

Sincerely,



John T. Nakahata

Counsel to Sorenson Communications, LLC

cc: Dana Shaffer
Andrew Mulitz
Karen Peltz Strauss
Bob Aldrich
Eliot Greenwald
Zenji Nakazawa

¹⁹ See Exs. 5 & 6.

**Exhibits 1-3
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Their Entirety**

Exhibit 4

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VRS RATE INCLUDING ALL COSTS

VRS RATE EXCLUDING ACCESS DEVICES/OUTREACH

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Starting Rate	\$2.92
Numbers-Related Costs	
Intellectual Property for Service	
CPE Research and Development	
Customer Premises Equipment	
Intellectual Property for End Points	
Installs and Outreach	
15.9% Permitted Margin	\$0.58
Total Rate	\$4.19 ¹
Taxes Paid	(\$0.23)
Margin After Taxes	9.54%

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¹ The figures here sum to \$4.21 rather than \$4.19, due to error introduced by rounding to two decimal places.

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Starting Rate	\$2.92
Numbers-Related Costs	
Intellectual Property for Service	
15.9% Permitted Margin	\$0.51
Total Rate	\$3.73 ²
Taxes Paid	(\$0.20)
Margin After Taxes	9.5%

Yellow Highlighting = Highly Confidential.

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² The figures here sum to \$3.74 rather than \$3.73, due to error introduced by rounding to two decimal places.

**Exhibits 5-6
Redacted in
Their Entirety**